THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.26434 of 2005

Date:16.12.2005

A.Gurappa.

--------PETITIONER

The District Educational Officer, Kadapa and others.

---------RESPONDENTS

ORDER:

The petitioner was appointed as a Record Assistant in the 2nd respondent-School way back on 11.06.1956. He was removed from service on 28.06.1965. Assailing the same, he filed O.S.No.223 of 1968 in the Court of the learned District Munsif, Nandalur. The suit was dismissed. He filed A.S.No.66 of 1970 in the Court of the learned Additional District Judge, Kadapa, against the decree

of dismissal of the suit. The appeal was allowed on 08.12.1970. Consequently, he was reinstated into service on 06.07.1978, after some correspondence. He retired from service on 30.02.1994.

The petitioner filed W.P.No.6070 of 1996 before this Court alleging that on account of the break in service from 28.06.1965 to 06.07.1978, he was denied the pensionary benefits. He sought for the relief of condonation of that period, to avoid break in service. The Writ Petition was disposed of on 10.09.1997 directing the concerned authorities to condone the break in service, enabling the petitioner to avail the pensionary benefits for the entire service without any break. The direction issued in the writ Petition is said to have been implemented.

The petitioner made a representation, dated 10.07.2003, to the 1st respondent with a prayer to refix his salary for the period from 28.06.1965 to 30.04.1994 and extend him the benefit of arrears. This representation was rejected by the 1st respondent, through his order, dated 11.08.2003. The same is challenged in this writ petition.

The learned counsel for the petitioner submits that the petitioner is entitled to the benefit of refixation of salary as well as the arrears in terms of memo, dated 17.02.1987, issued by the Government of Andhra Pradesh. He contends that the petitioner cannot be penalized, on account of the termination, which was held to be illegal.

The learned Government Pleader for School Education, on the other hand, submits that the order of termination was the subject matter of a Suit as well as an Appeal, and unless the relief claimed herein was covered by the decree passed in the appeal, he cannot be extended any relief. He further contends that even otherwise, the claim of the petitioner is barred by laches.

Aggrieved by the order of termination, dated 28.06.1965, the petitioner filed a

Suit and thereafter an Appeal. The order of termination was set aside by the appellate Court. The question as to how the period between the date of removal and the date of reinstatement is to be treated must have been dealt with by the Court, which passed the decree. The petitioner cannot claim any relief in relation thereto, in separate proceedings. Such a course would be barred by the principle of constructive *res judicata*. Secondly, the petitioner approached this Court by filing W.P.No.6070 of 1996. Even if there was any impediment for him in claiming the relief referred to above in the Suit and the Appeal, he ought to have claimed the same, in the said Writ Petition. This Court granted a limited relief to the petitioner to the extent of regularizing the break in service. At any rate, the relief claimed is in relation to a point of time, which is before three decades. Therefore, the petitioner cannot be granted any relief at this stage.

Hence, the Writ Petition is dismissed. There shall be no order as to costs.

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14.12.2005

Jsu